



FRAUD FACTS

VOLUME 2, ISSUE 3 • NOVEMBER 2005

ABOUT *FRAUD FACTS*

Fraud Facts is published by the Air Force Deputy General Counsel (Contractor Responsibility) to present current information about selected fraud, suspension and debarment actions, and other issues of interest. Many different agencies contribute to the investigation, prosecution, and completion of a case, including, but not limited to, the Air Force Office of Special Investigations, the Defense Criminal Investigative Service, and the Air Force JAG Corps. We thank you for your continued support and assistance in protecting the government's contracting interests.

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CRAF CONTRACTS VALUED AT \$2.2. BILLION AWARDED

Air Force officials at Headquarters Air Mobility Command (AMC) announced on September 13, 2005, the award of \$2.2 billion worth of annual International Airlift Services contracts in support of the Civil Reserve Air Fleet program (CRAF).

Civilian airlines contractually commit to the CRAF to support Department of Defense (DoD) airlift requirements in emergencies when the need for airlift exceeds the capability of military aircraft. To pro-

vide incentives for civil carriers to commit aircraft to the CRAF program and to assure the United States of adequate airlift reserves, AMC annually awards peacetime airlift business to civilian airlines that offer aircraft to the CRAF. The DoD offers business through the International Airlift Services contract.

Airlines may contract as teams to optimize their resources for commitment. In the history of the program, the DoD has twice called on the CRAF to support

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AIR FORCE RESCUES THOUSANDS

NEW ORLEANS, LOUISIANA

Air Force support to FEMA relief efforts in New Orleans continues. As of September 7, 2005, 4,139 missions have been flown. Those missions have moved more than 22,700 passengers and 10,400 tons of supplies and equipment. In addition, Air Force helicopter crews

have rescued more than 4,900 people and an Air Force Expeditionary Medical Squadron located at Louis Armstrong International Airport has treated more than 5,500 people. Air Force evacuation teams had transported 2,600 patients as of September 7, 2005.



NEW ORLEANS—Tech. Sgt. Keith Berry looks down into flooded streets searching for survivors. He is part of an Air Force Reserve team credited with rescuing more than 1,040 people in the aftermath of Hurricane Katrina. He is a pararescueman with the 304th Rescue Squadron from Portland, Ore. (U.S. Air Force photo by Master Sgt. Bill Huntington)

AIR FORCE GENERAL COUNSEL ADDRESSES ABA ON ETHICS

The Air Force General Counsel, the Honorable Mary L. Walker, presented and led a panel of experts on the subject of Ethics in Government Contracting from the Air Force perspective to an American Bar Association conference on November 11, 2005. In light of the recent defense industry ethical breaches, Ms. Walker's speech on government contracting is a timely reminder of the Air Force's commitment to encouraging and requiring the application of ethics programs at the most fundamental and integral levels of government contracting. The Air Force strives for ethics programs that reach beyond mere compliance and that are centered on values, and emphasizes the role leadership plays in achieving these high, but necessary standards both internally, and by its contractors. Ms. Walker highlights in her presentation the work that GCR does to encourage contractors to perform ethically. This ethical mission is all the more important as the United States Air Force stretches to meet the needs of combative and humanitarian efforts across the globe.

For the entire speech please go to:
<https://intranet.hq.af.mil/webfiles/safgc/safgcr.htm>.

RECENT DEBARMENTS

- Gary Douglas Burks
- Omni Capital Limited Partnership f/k/a
Burks Family Limited Partnership
- Linda J or G Douglas Burk a/k/a
GD Burk
- AM-AR International, Ltd. a/k/a
American Argeon a/k/a
Airborne Product Support– Louisville a/k/a
Airborne Product Support– Kentucky
- JAIR United, Inc. d/b/a
Jet Aircraft Instrument Repair
- Douglas Industries, Inc. d/b/a
Airborne Product Support, Ltd. a/k/a
APS a/k/a
APS– California
- U.S. Overseas, Inc.
- UNC-LSI, Inc.
- Joshua M. Coleman

WEB RESOURCES

SAF/GCR WEBSITES

SAF/GCR*

<http://afnet.safgc.hq.af.mil/safgcr.htm>

HAFDASH GCR

<https://intranet.hq.af.mil/webfiles/safgc/>

FLITE GCR

<https://aflsa.jag.af.mil/>

SPECIAL FEATURES ON SAF/GCR WEBSITES

- Debarment Memoranda
- Administrative Agreements
- Archived *Fraud Facts*

ADDITIONAL WEBSITES+

Central Contractor Registration

<https://www.bpn.gov/CCR/scripts/index.html>

Defense Federal Acquisition Regulations

<http://www.acq.osd.mil/dpap/dars/dfars/index.htm>

Excluded Parties List System

<http://www.epls.gov/>

* Archived *Fraud Facts* Newsletters posted here.

+ Multiple other useful links may be found on the SAF/GCR websites.

ARTICLES & SPEECHES

ARTICLES

- Suspension & Debarment in a Nutshell
http://afnet.safgc.hq.af.mil/sd_shaw_nutshell.htm
- Suspension & Debarment: Emerging Issues in Law and Policy
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=509004

RECENT SPEECHES & ARTICLES

- November 11, 2005: The Honorable Mary L. Walker presented and led a panel of experts on the subject of Ethics in Government Contracting from the Air Force perspective to an American Bar Association conference.
- October 18-20, 2005: Richard Pelletier participated as an instructor in the National Suspension and Debarment Training Program (NSDTP) in Rosslyn, Virginia. NSDTP is sponsored by the Dept. of Homeland Security to train investigators, contracting personnel, and attorneys on the Federal suspension and debarment process.
- October 6, 2005: Steven Shaw presented at an AFMC/JA Conference in Keystone Colorado.



SHAW SPEAKS OUT ABOUT BOEING

AIR FORCE OFFICIAL: "BOEING HAS A LOT TO BE PROUD OF"

"Boeing has really improved its reputation as an ethical contractor," said Steven Shaw, Deputy General Counsel for Contractor Responsibility for the U. S. Air Force. Speaking in August to participants in the Boeing Executive Program II at the Boeing Leadership Center in St. Louis, Missouri, Shaw applauded Boeing employees for their efforts to build, sustain and practice "a strong culture of ethics." In

March, Boeing and the Air Force signed an interim administrative agreement lifting the suspension of Boeing's expendable launch business. "The administrative agreement sets out the wonderful things Boeing has done, and Boeing has a lot to be proud of," Shaw added.

Special thanks BOEING NEWS NOW– MIDDAY EDITION for loan of

AM-AR RECEIVES 15-YEAR DEBARMENT – LOUISVILLE, KENTUCKY

AM-AR International, Ltd., a Kentucky company engaged in the supply and repair of military aircraft parts to foreign countries, the Department of Defense (DoD), and the United States Air Force, performed under the Government Foreign Military Sales Program. Gary Burks, owner of AM-AR, created layers of various companies to escalate profit margins in order to amass sufficient income to pay large bribes to specific Royal Saudi Air Force officials. AM-AR also made payments of \$2,000 per month to an unidentified individual purporting to have a relationship with the President of Burkina Faso in an attempt to curry influence with that government.

Burks committed conspiracy, mail fraud, and money laundering by submitting false invoices through fictitious companies, thereby illegally inflating the prices charged to the Royal Saudi Air Force for C-130 parts, and by submitting bogus and inflated invoices directly to the Royal Saudi Air Force for payment. Burks used several shell companies to carry out this scheme. In addition, Burks and other individuals executed five acts of racketeering involving mail fraud, money laundering, and extortion. One of the acts of racketeering was the extortion of Derco Aerospace. Burks threatened economic harm to Derco by interfering with the Royal Saudi Air Force contract. Ultimately, Burks succeeded in securing a "procurement agreement" with Derco that set aside \$4.2 million in parts for AM-AR to supply to it as a subcontractor.

On August 21, 2000 Burks pled guilty to conspiracy to pay kickbacks and Federal income tax fraud in connection with the scheme designed to defraud the Government and the Kingdom of Saudi Arabia. On January 30, 2002 Burks was sentenced in the United States District Court for the Western District of Kentucky to a year and a day in a community detention facility, fined \$42, 613, ordered to pay restitution of \$107,386, and ordered to pay a special

assessment of \$200. Burks is also subject to two years of supervised release after serving his sentence. The U.S. Air Force debarred Burks and other related officials on September 2, 2005.



AIR FORCE CHIEF OF STAFF RETIRES

Air Force Chief of Staff General John P. Jumper retired after 39 years of service at an Andrews AFB ceremony on Sept. 2. His effective date of retirement was November 1, 2005. General T. Michael Moseley, previously serving as Air Force Vice Chief of Staff, was sworn in as the eighteenth Air Force Chief of Staff.

The views and opinions of the authors expressed herein do not necessarily state or reflect the official policy or position of the Department of the Air Force, Department of Defense, or United States Government. Distribution is limited to agencies of the United States Department of Defense unless otherwise authorized by SAF/GCR. Please refer all requests to receive Fraud Facts to Lauren Baker at Lauren.Baker@pentagon.af.mil or to Sarah Moffett at Sarah.Moffett@pentagon.af.mil.



ZERO TOLERANCE

LOCKHEED MARTIN INTERVIEWS USAF SUSPENSION & DEBARMENT OFFICIAL



From the outrageous to the insidious, Steven Shaw has seen ethical lapses of every stripe. But they all have one thing in common, says the U.S. Air Force deputy general counsel in charge of suspensions and debarments.

In the long run, ethical issues harm those who committed them in ways far more substantial than any perceived potential advantage.

“The pendulum is swinging strongly in the direction of zero tolerance for unethical behavior,” Shaw says, citing the rise in ethics misconduct cases across the corporate landscape. In the defense industry, he adds, companies should be forewarned that “no contractor is so big or so important that it can’t be debarred.”

Shaw is not alone in his tough views on ethics violations. The rising tide of outrage over wrongdoing is being strongly expressed across the defense community.

In a recent speech, Daniel Nielsen, deputy director for program acquisition and international contracting in the Pentagon’s main acquisitions office, warned of the consequences of a poor reputation for contractors who are viewed as “basically someone you cannot trust to do business with.”

“Past performance is a very important part of any source selection,” Nielsen says, “and if you have a suspension or debarment or a history of ethical violations, it’s hard to make that look good on a past performance analysis.”

On the other hand, Shaw adds, companies with a demonstrated commitment to ethical behavior and a history of openness in addressing violations are viewed more favorably by the customer community.

A strong past performance on ethics issues can be a tiebreaker in contract competitions, plus Shaw says he’s more likely to work with, rather than to debar, contractors having a history of openness and a solid ethical reputation, as opposed to those with a history of attempting to hide wrongdoing.

Ethics issues can be complex, and even companies with excellent training programs can occasionally have problems with an employee who breaks the rules, Shaw says. But the way a company handles those lapses is

telling, he notes.

“I have come to believe that the most important aspect in addressing ethical issues is the need for contractors to trust the customer and to respond with openness and candor when questions arise,” Shaw says.

Too often, he says, contractors’ response to ethical questions is to “circle the wagons” and place total responsibility for the issue in the hands of the company’s lawyers. Shaw says getting sound legal advice is essential but adds that, in many cases he has seen, management has failed to adequately accept responsibility and accountability for unethical behavior within their companies.

Another ethical shortcoming that Shaw has seen at some companies is giving lip service to ethics but failing to follow through with a demonstrated commitment at all levels. For example, he says, one company boasted of spending \$1 million to hire an outside contractor to provide ethical training to its employees.

“That wasn’t something to brag about,” Shaw says. “It’s fine to solicit the expertise of consultants, but if the company’s leadership wasn’t down in the trenches doing the work with front-line managers and giving them the tools and support to do the right thing, then bringing in an ethics contractor wasn’t going to help.”

He also bristles at companies who have two versions of their ethics program — one for the commercial side of the business and one for the government side. The “clear message” to employees, he says, is that rigorous ethics standards have been put in place to satisfy the customer, not because ethical behavior is the right thing to do.

Shaw’s advice to companies who are serious about establishing strong ethical values is to start by “delivering a credible and consistent message to employees that they have a responsibility to do more than just avoid engaging in misconduct themselves.”

Employees need to call attention to questionable behavior and to know that they will have management’s support, regardless of whether their concerns prove to be valid, he says.

Using the analogy of an employee who stops an assembly line because of a safety concern, Shaw says, “You don’t need to be particularly brave to stop the line when you know there’s a danger, but it takes a lot of courage to

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FRAUD FACTS STAFF

Lauren Baker
Sarah Moffett
Sean Cavote

Editor
Co-Editor
Writer



ZERO TOLERANCE

LOCKHEED MARTIN INTERVIEWS USAF SUSPENSION & DEBARMENT OFFICIAL (CON'T.)

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stop the line when you're not sure. That's the kind of employee courage in ethics reporting that companies need to be rewarding and holding up as an example."

By paying as much attention to questionable situations as full-blown violations, he adds, companies can often avoid bigger issues — the same way that safety programs emphasize investigating "near misses" as a way of identifying the root causes that could lead to actual injuries.

When ethics questions do arise, Shaw is favorably impressed with companies who are proactive in working with his office, above and beyond their contractual obligation, to see them resolved.

"Some contractors will routinely call me and communicate when there's a question even if there's no legal obligation in place," he says. "That shows me that they want to be open with us, they trust us, and they want to do the right thing."

Ultimately, he says, companies need to give ethics officers a seat at the table when business decisions are being made. A stronger criterion than "is it legal?" should be "is it right?" Shaw contends.

"A lot of companies still don't have the ethics officer at the table, but that's where they need to be," Shaw says. "The first answer to the question of 'Why are we doing this?' should always be 'Because it's the right thing to do. Period.'"

Companies who adhere to that standard, he says, are the ones who are truly demonstrating their commitment to their customers' best interests.

Lockheed Martin strongly agrees with Steven Shaw on the importance of conducting business ethically and in maintaining trust with our customers. "We make many important commitments to customers to assure their mission success, but none is more important than our commitment to ethical behavior," says Bob Stevens, the Corporation's President & Chief Executive Officer. "It is the foundation of trust. We never want our good performance and our technical accomplishments to be overshadowed by ethical lapses," he adds. "Nothing is more important than our integrity, and good ethics is good business."

PHOTO CAPTION Steven Shaw, the U.S. Air Force Suspension and Debarment Official. A special thanks to LM TODAY for loan of this article. To contact the editor of LM TODAY, please send an e-mail to:
corporate.ethics@lmco.com.

ETHICS CORNER

RESERVISTS' ETHICAL DUTIES *By Marques O. Peterson*

With our increased operational tempo, our reservists have, and continue to be, an integral and vital part of the total force structure. This increased involvement however, requires reservists, commanders and their advisors to understand and steer clear of potential pitfalls when considering reserve assignments. This article addresses the common question of whether ethical provisions/prohibitions in the Joint Ethics Regulations (JER) limit reservist assignments within a particular organization or government position.

The ethics rules in this area are written in terms of (1) what government matters the reservist will work on, (2) what types of government information the reservist will have access to, (3) disclosure and misuse of government information by the reservist, and (4) appearance concerns. Reserve personnel serving on active-duty are subject to the same ethical restrictions (many of which are found in Title 18 of the United States Code) as their active duty counterparts. Below is a broad overview of the most relevant rules applicable to the assignment of reservists.

- Commanders have an affirmative obligation under JER§ 5-408 to refrain from assigning reservists to perform duties that could enable them to obtain non-public information or gain an unfair advantage over competitors, or which present an actual or apparent conflict of interest. Therefore, reservist should be screened prior to assignment of duties to ensure that no actual or apparent conflict exists between their private interests and the duty to be assigned. As part of this screening process, reservists have an affirmative obligation to disclose material facts regarding their financial holdings and employment.
- The commander, the reservist and his/her private employer should also be aware of the potential organizational conflict of interests that may be created by the reservist's civilian employment. See 18 U.S.C. § 208(a). An organizational conflict of interest may disqualify the private sector employer from participating in procurement actions when the reservist returns to his/her civilian job after completing a tour on active duty. An organizational conflict of

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SUSPENSION & DEBARMENT IN A NUTSHELL

(This column is a continuation of an ongoing series explaining Suspension and Debarment. The article may be viewed in its entirety at http://afnet.safgc.hq.af.mil/sd_shaw_nutshell.htm.)

PROCEDURE

REFERRAL TO SAF/GCR

Once evidence is obtained supporting a reasonable belief that a contractor may have committed actionable misconduct, the evidence is referred to the Secretary of the Air Force, Deputy General Counsel for Contractor Responsibility (SAF/GCR), in the manner set forth in the Defense Federal Acquisition Regulation Supplement (DFARS). DFARS 209.406-3. The information listed in the DFARS is important to our analysis of the allegations, but is not required in all cases. Furthermore, the formal DFARS referral need not be the first contact with SAF/GCR. Reporting persons are encouraged to contact SAF/GCR at the earliest opportunity, as are contractors seeking to avoid debarment. Contact Richard Pelletier, Assistant Deputy, at: (704) 588-0049, DSN 425-0049, fax (703) 588-1045, DSN fax 425-1045, email Richard.Pelletier@pentagon.af.mil.

ANALYSIS OF THE EVIDENCE

The most useful information in the referral is the analysis of the evidence. A referral that says "Joe Jones falsely certified that he had tested widgets" is far less useful, for example, than one that describes the evidence supporting that conclusion. The former, which merely states the violation, requires follow-up research and results in delay. A well-prepared description of the evidence often enables SAF/GCR to take immediate action. It is also helpful to have the referring person's email address so that we may quickly obtain additional information. If a fraud remedies plan has been prepared, it should be included in the information sent to SAF/GCR.

NOTICE TO CONTRACTOR

Once it has been determined that there is evidence of misconduct that requires action, SAF/GCR sends a letter to the contractor. The letter notifies the contractor that it is suspended or proposed for debarment, sets forth the effects of the suspension or debarment, and advises the contractor of its rights. The contractor's name is then posted onto the General Services Administration's web site, signifying the

person's immediate ineligibility for new contracts.

CONTRACTOR'S RESPONSE

Responses are usually received from the contractor or its attorney within the 30 day period required by the FAR. Before making a submission in opposition to the suspension/debarment, the contractor usually will request and receive a copy of the administrative record. The administrative record contains the information relied upon in reaching the decision to suspend or propose debarment. Privileged communications and other information not relied on are not included within the administrative record and are not provided to the contractor. The referring party should advise SAF/GCR at the time of the referral of any information that the person believes should not be provided to the contractor, and, therefore, should not be shown to the suspending/debarring official or considered in the suspension or debarment decision.

There is no right to discovery beyond the right to a copy of the administrative record on which the suspension or debarment is based.

The contractor typically provides a written submission in opposition to the suspension or proposed debarment, in which the contractor either disputes the facts of the misconduct as stated in the notice or concedes the facts. Where the facts are not contested, the contractor will usually set forth information, which, it contends, establishes its present responsibility in spite of the misconduct.



OVER THE PACIFIC OCEAN—A B-1B Lancer drops back after air refueling training Sept. 30, 2005. The B-1B is deployed to Andersen Air Force Base, Guam, as part of the Pacific Command's continuous bomber presence in the Asia-Pacific region.

CONTRIBUTING WRITERS

Marques O. Peterson, SAF/GCA
A special thanks to this issue's contributors.



ETHICS CORNER (CON'T.)

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interest may result when factors create an actual or potential conflict of interest on a current contract or when the nature of the duties assigned creates an actual or potential conflict of interest on a future acquisition. See FAR Part. 9.502.

- Finally, reservists must be mindful of the post-government employment restrictions found in Title 18 (section 207). Moreover, each time a reservist completes a tour of duty, a new period of post-government employment begins, starting the restrictions in 18 U.S.C. § 207 all over again. There may be other situations when other ethics rules apply to the reserve assignment; therefore, you should contact your ethics counselor when issues arise.

CRAF CONTRACTS

(Continued from page 1)

airlift requirements during wartime. Operation Desert Storm and the Global War on Terrorism both relied on carriers participating in the CRAF program.

FRAUD REMEDIES REFERENCE GUIDE

SAF/GCR published a Fraud Remedies Reference Guide discussing the elements of criminal and civil statutes relevant to prosecuting procurement fraud. The reference guide includes chapters on the role of the Acquisition Fraud Counsel, the preparation of fraud remedies plans, and the procedures for handling *qui tam* cases. It also contains an appendix with the revised and simplified format for fraud remedies plans. The Fraud Remedies Reference Guide can be found in the "Procurement Fraud" section of each SAF/GCR web site. For example, the link to the AFNET version is here:

<http://afnet.safgc.hq.af.mil/docs/04fraudremrefguide.pdf>.

FRAUD REMEDIES BULLETINS

Previous Fraud Remedies Bulletins & Updates, insightful tools addressing pertinent contracting issues facing investigators and attorneys today, and *Fraud Facts* are published by SAF/GCR. Previous Bulletins, Updates, and *Fraud Facts* are available on SAF/GCR's websites, as listed on page 2 of this issue under Web Sources.

SECRETARY OF THE AIR FORCE
DEPUTY GENERAL COUNSEL FOR CONTRACTOR RESPONSIBILITY
4040 N. FAIRFAX DRIVE • SUITE 204 • ARLINGTON, VA 22203
COMMERCIAL: 703.588.0090 • FAX: 703.588.1045 • DSN: 425.0090 • DSN FAX: 425.1045

Steven A. Shaw
Richard A. Pelletier
John W. Polk
Laura Fernandez
Sarah Moffett
Sean Cavote
Lauren Baker

Deputy General Counsel
Assistant Deputy General Counsel
Director, Fraud Remedies
Associate Counsel
Legal Intern
Legal Intern
Legal Intern

Steven.Shaw@pentagon.af.mil
Richard.Pelletier@pentagon.af.mil
John.Polk@pentagon.af.mil
Laura.Fernandez@pentagon.af.mil
Sarah.Moffett@pentagon.af.mil
Sean.Cavote@pentagon.af.mil
Lauren.Baker@pentagon.af.mil

